

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.4251 of 1998

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For Approval and Signature:

Hon'ble MR.JUSTICE H.L.GOKHALE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? YES

2. To be referred to the Reporter or not? YES

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3. Whether Their Lordships wish to see the fair copy of the judgement? NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? NO

5. Whether it is to be circulated to the Civil Judge? NO

BHUPATSING RAMUBHA JHALA

Versus

PRINCIPAL

Appearance:

MR SK BUKHARI for Petitioner

Mr. Tushar Mehta for Respondents nos.1 & 3

MR Nanavati for Respondent No.2

CORAM : MR.JUSTICE H.L.GOKHALE

Date of decision: 02/07/98

ORAL JUDGEMENT :

Heard Shri Bukhari, learned advocate for the petitioner; Shri Tushar Mehta, learned advocate for respondent nos.1 and 3; and Shri Nanavati, learned advocate for respondents no.2.

2. The petitioner is a Peon working in respondent no.1- College. He is a graduate and has applied for being considered for admission into B.Ed. course against one seat which is retained under Circular dated 14.8.1991

of the Saurashtra University for a particular category specified therein.

3. Since the petitioner seeks admission into B.Ed. course, in that category, commencing in July 1998, Rule is issued on the petition and is heard forthwith. Respondent no.1 has already filed reply. Shri Mehta and Shri Nanavati, learned advocates appearing for respondents waive service of the rule. Shri Nanavati has made his submissions with respect to this rule.

4. Relevant clause of the above circular dated 14.8.1991 when translated into English reads as follows :

"It is hereby resolved that in B.Ed. Colleges affiliated to the University, one seat will be reserved for the children and wife/ husband of the employees of teaching staff and one seat will be reserved for the children and wife/ husband of non teaching staff; in all two seats will be reserved in those categories."

Shri Nanavati, learned advocate submits that this rule does not specifically provide that the employees themselves are covered. Hence they are excluded. On the other hand, Shri Bukhari, learned advocate submits that the rule is made for making a specific enabling provision for the children and/or spouse of the employees. If spouse of an employee can get this facility there is no reason why the rule should be interpreted to mean that the employee himself is excluded. In my view the submission of Shri Bukhari, learned advocate deserves to be accepted for this reason. Otherwise, it will lead to anomalous situation as stated by him that spouse of the employee is entitled to the particular benefit, but not the employee himself. There are no other provisions making any such reservation for employees. It will, thus, be construed that coverage of the employees is implied in this rule, because this is the only avenue for a sort of quality improvement for them. The seats to be reserved at the highest are only two; one for teaching and one for non teaching categories. In the circumstances there is no reason why the employees be considered as excluded from this coverage.

5. Shri Nanavati and Shri Tushar Mehta, learned advocates submit that if the employees are sought to be covered in this rule, they will be required to be granted leave for the relevant period. That will be so. If any beneficial provision is to be made it has to be made completely and not halfheartedly. The rule, as read and

understood by me, includes and covers the employees and they will be entitled to the particular benefit with full facility.

6. Shri Mehta, learned advocate submitted that the petitioner- employee had made some incorrect statements in the petition as also with respect to marks obtained by him. That is not something which should be read too much against him.

7. In view of the above interpretation of this rule, the petitioner will be entitled to be considered under the above circular of the University. It does not mean that he will be granted admission. He is eligible to be considered. If there are other persons falling in the same category with better marks, obviously such other persons will be preferred.

8. The petition is allowed accordingly. Rule is made absolute as above. Direct service is permitted. No order as to costs.

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